IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

Crl.MC.No. 3890 of 2006()

AGAINST THE ORDER DATED 15/11/2006 IN C.M.P.5549/06 IN CC.577/2004 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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PETITIONER:

P.M. BASHEER, PROPRIETOR,
M/S RAISA CREATION,
T.C.76/1320, CROSS A, BAGATH SING ROAD,
PETTAH,
THIRUVANANTHAPURAM-695 024.

BY ADV. SRI.M.TRIPTEN

RESPONDENTS:

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1. U. SASIDHARAN, PROPREITOR,
M/S. ULLATTIL CINE MEDIA,
41/1579, ARANGATH ROAD,
COCHIN-18.

2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. PUZHAKKARA MUHAMMED.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/11/2006 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3890 OF 2006

Dated this the 24th day of November, 2006.

ORDER

The petitioner is the accused in a prosecution under Section 138 of the N.I Act. The complainant was examined in chief; but he was not cross-examined. On an application filed under Section 311 Cr.P.C, the petitioner was permitted to cross-examine the complainant on a later date. On that date also, the petitioner's counsel was not present and the complainant could not be cross examined. The matter was posted for examination under Section 313 Cr.P.C. Before the petitioner was examined under Section 313, the petitioner filed yet another application under Section 311 Cr.P.C for an opportunity to cross examine the complainant. The learned Magistrate noting that the earlier opportunity was not availed of by the petitioner, found no bona fides in the request and rejected the prayer.

2. The petitioner has now come to this Court with the submission that the refusal of permission to cross examine the complainant is working out great prejudice and loss to the petitioner. His effective defence is hampered. Subject to any appropriate conditions, the petitioner may be granted such a

further opportunity. The learned counsel for the petitioner further points out that in an identical case (Crl.M.C No.3876 of 2006) between the same parties, which was disposed of yesterday (ie. on 23.11.2006), the petitioner was granted an opportunity subject to conditions to cross examine the complainant. Similar indulgent direction may be passed in this case also, it is prayed.

3. The order passed by the learned Magistrate cannot be said to be unsustainable or harsh. But I am satisfied, subject to appropriate conditions, the petitioner can be granted the luxury of a further opportunity to cross examine the complainant to avoid any real or feigned grievance about denial of opportunity. But certainly the petitioner must be mulcted with liability to pay costs for such indulgence of a luxury of further opportunity.

4. In the nature of the order which I propose to grant in this case, I am satisfied, it is not necessary to wait for issue and return of notice to the respondent/complainant.

5. In the result:

i) This Crl.M.C is allowed;

ii) The complainant shall be recalled for further cross-examination and be permitted to be cross examined on the next

date of posting on condition that the petitioner deposits an amount of Rs.600/- (Rupees Six hundred only) before the learned Magistrate within 5 days from this date and give notice of such deposit to the learned counsel for the respondent within a further period of 5 days. The learned Magistrate shall release the amount to the complainant and shall permit the petitioner's counsel to cross examine the complainant.

6. Hand over a copy of this order to the learned counsel for the petitioner forthwith for production before the learned Magistrate.

R.BASANT
JUDGE

rtr/